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December 6, 2013

The Honorable Anthony Petruccelli, Senate Chair  
Joint Committee on Financial Services  
State House, Room 424  
Boston, MA 02133

The Honorable Michael Costello, House Chair  
Joint Committee on Financial Services  
State House, Room 254  
Boston, MA 02133

**Re: House Bills 848, 919 and Senate Bill 438**

Dear Chairman Petruccelli, Chairman Costello, and Members of the Joint Committee:

I am writing to address two subjects before the Joint Committee on Financial Services: appeals of motor vehicle accident surcharges and transparency in auto insurance rating.

First, we write in support of both House Bill 848, *An Act Relative to Motor Vehicle Insurance Surcharges*, which was subject to a hearing on November 6<sup>th</sup>, and House Bill 919, *An Act Relative to Stay a Surcharge Pending Appeal Hearing*, which was subject to a hearing on September 6<sup>th</sup>. Both bills amend section 113 of chapter 175 of the General Laws, which pertains to appeals of at-fault surcharges in auto insurance. Both will provide additional consumer protections to ensure that drivers who are wrongfully determined to be at fault for auto accidents are not required to pay additional premiums. However, it is our opinion that H. 919 provides greater consumer protections.

House Bill 919 provides that an insurer's at-fault surcharge determination must be stayed while that determination is being appealed to the state's Board of Appeal. Currently, insurers are allowed to impose surcharges while consumers are waiting for their surcharge appeal hearings. If the Board of Appeal later vacates the surcharge, the insurer is required by law to refund the surcharge to the consumer.

This system is problematic. As an initial matter, it is set up in a way that presumes consumers are responsible until proven otherwise. Moreover, our Office has found during the course of investigations that many insurers have failed to provide consumers with appropriate refunds after surcharges were vacated by the Board of Appeal. In fact, earlier this year, we filed Assurances of Discontinuance in Suffolk Superior Court relating to five insurance companies' alleged failures to pay back all or portions of surcharges after the surcharges had been vacated. While the exact extent of the overcharges is still



unknown, and will be determined through AGO supervised audits, we estimate that Massachusetts consumers were overcharged by at least one million dollars by these companies. Through our investigations and implementation of our settlements in these matters, we have learned that calculating refunds of surcharge premiums are a time consuming and onerous process for insurance companies. Accordingly, staying surcharges, as proposed by H. 919, makes sense for all involved parties.

House Bill 848 requires insurers to reimburse the consumer the amount overcharged, with interest, if the Board of Appeal overturns an at-fault determination. Reimbursements with interest are only fair. However, under H. 919 it may be possible to avoid reimbursements all together by only collecting the surcharge when it is final. The result would be a more efficient and fairer system for all parties.

Next, I am writing to support Senate Bill 438, *An Act Promoting the Transparency of Automobile Insurance Surcharges*. This bill requires insurers to plainly disclose to consumers why they may be assessed certain surcharges and how they can take steps to eliminate these extra charges.

Full disclosure of insurance pricing is extremely important for consumers. In order to effectively shop around for insurance, drivers should know how much they will be charged, and what they can do to lower their insurance rates. Under managed competition, many insurers now use their own specific rating plans, and charge different amounts for various driving violations.

Senate Bill 439 enhances transparency in two ways. First, it requires insurers to publically disclose their merit rating plans, lists of surchargeable events, and the circumstances under which surcharges may be removed or refunded. Providing this information enables consumers to better compare companies and choose those companies which are likely to view their driving records most favorably.

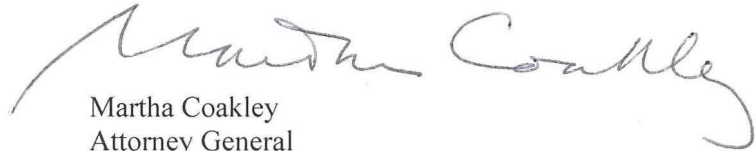
Additionally, the bill requires insurers to itemize the premium charges associated with each accident or violation on the policyholder's driving record. Not only will this disclosure provide additional helpful information to each consumer about his or her premium, but the full disclosure of surcharges will also help consumers identify errors in insurer compilations of consumer driving records. This is particularly important because some insurers now obtain driving information from privately operated claims databases instead of the RMV. This can have negative implications for consumers because insurers can make erroneous assumptions about claims that appear in the databases.

For example, some insurers assume that entries listed in private databases as un-subrogated collision claims are at-fault accidents, when this is not always the case. Additionally, accidents for which the Board of Appeal has cleared a driver of fault have also appeared in these private claims databases and can be errantly assumed to be at-fault accidents by insurers and surcharged as such. Through our consumer complaint programs and investigations, our Office is aware of instances where consumers have been wrongly surcharged, and in some cases, surcharged twice for the same accident. Affording consumers the opportunity to review the driving incidents for which they are being charged is critically important both as a matter of basic fairness and as a means to prevent overcharges.

In conclusion, we support both H. 919 and H. 848, but believe that between the two, H. 919 offers greater consumer protections. Therefore, we urge the Committee to give H. 919 a favorable recommendation. In addition, for the forgoing reasons, we respectfully request that the Committee give Senate Bill 438 favorable treatment. As you continue to review this legislation, please do not hesitate to contact our Office with any questions or concerns.

Thank you for your consideration.

Cordially,

A handwritten signature in cursive script, reading "Martha Coakley".

Martha Coakley  
Attorney General